



Professional Services General Terms

For SystemLink Server, SystemLink Enterprise and O+

These Professional Services General Terms (“PST”) together with the ESS Documentation, contain the entire agreement of the parties relating to its subject matter, and supersede all previous agreements, negotiations and proposals between the parties relating to this subject matter. Amendments and additions to this PST shall, in order to be binding on the parties, be made in writing and duly executed by the parties. Acceptance of an ESS Documentation by you also includes acceptance by of this PST. Capitalized terms not defined in this PST shall have the meanings given to such in the ESS Documentation.

All capitalized terms used herein but not otherwise defined herein shall have the meaning given to them in the General Terms and Conditions for O+ Software and/or General Terms and Conditions for SystemLink Software, as applicable to you.

In this PST, "you" means the customer identified in the relevant ESS Documentation.

1. STATEMENTS OF WORK AND QUOTES

You may, from time to time engage NI to provide Software Services in accordance with this PST. The Parties will agree on the Software Services to be performed, the performance timeline and milestones, other transaction-specific terms through Statements of Work or other form of documentation, which, if applicable, will be deemed to be attached as exhibits to this PST (each, an “SOW”). The fees and payment terms shall be detailed in the Quote attached as exhibit to the applicable ESS Documentation to which this PST is related (each, a “Quote”). The initial Quote shall be attached to applicable ESS Documentation to which this PST is related and attached by way of reference (“Initial Quote”).

2. PRICING; INVOICING AND PAYMENT

- 2.1. **Invoice**. NI will invoice you for the fees owing under each Quote (“Service Fees”) in accordance with the terms set forth in the applicable Quote.
- 2.2. **Payment**. You will pay all Service Fees on each invoice under a Quote within thirty (30) days from the date of such invoice. All payments will be made in the currency specified on such invoice. Undisputed overdue amounts shall accrue interest as of the due date at the rate of one percent (1 %) per month or the maximum amount allowed by law, whichever is less.
- 2.3. **Taxes**. All sums payable under this PST shall be paid free and clear of any deductions, set offs or withholdings. Where deductions or withholdings are required to be made by law, you shall be obliged to pay such amount as will, and after the deduction or withholding has been made, leave NI with the same amount as it would have been entitled to receive in the absence of such requirement to make a deduction or withholding.

3. IP OWNERSHIP.

Each Party shall retain ownership of all of its intellectual property rights in existence prior to entering into this PST, and neither Party grants to the other Party any license under its intellectual property rights, except as otherwise expressly provided herein.

4. TERM AND TERMINATION

- 4.1. **Term**. This PST commences on the Effective Date and, unless terminated in accordance with the provisions of this PST, will remain in full force and effect for a period of twelve (12) months (the “Initial Term”) and thereafter automatically renew for successive twelve (12) month periods (each, a “Renewal Term” and together with the Initial Term, the “Term”) unless either Party, not less than sixty (60) days prior to the end of the then-current term, gives the other Party written notice of its intent not to renew.



- 4.2. **Material Breach; Bankruptcy.** Each Party may terminate this PST or any SOW(s) (if any) immediately upon written notice to the other Party: (a) if such other Party commits a material breach under this PST and, if curable, fails to cure that breach within thirty (30) days after receipt of written notice specifying the material breach; and/or (b) if such other Party is declared bankrupt by a judicial decision, or, in the event a bankruptcy action is filed against such other Party, it has not taken, within thirty (30) days from service of such action to such Party, any possible action under applicable law for such filed action to be dismissed.
- 4.3. **Effect of Termination.** Termination of this PST will not affect any rights or liabilities accrued by a Party prior to the effective date of termination. Upon the effective date of termination of this PST, all existing SOWs (if any) will immediately terminate. Termination of one SOW (if any) shall not mean the termination of any other SOWs (if any). Promptly following the effective date of termination, you will pay NI any accrued and outstanding Service Fees in respect of work performed until such date. Sections 3 (*IP Ownership*) and 5 (*Representations and Warranties*) - 8 (*General*) (inclusive) will survive termination.

5. **REPRESENTATIONS AND WARRANTIES.**

Each Party represents and warrants that: (a) it has all right and authority to enter into this PST (including any SOW, if any) and to perform the obligations set forth herein; and (b) entering into and performing under this PST will not violate any other agreement to which it is a party or by which it is bound.

6. **DISCLAIMER AND LIMITATION OF LIABILITY.**

EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN SECTION 5 ABOVE AND TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, NI MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING, OR RELATING TO THE SERVICES PROVIDED HEREUNDER. NI SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, AND ANY OTHER WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OF TRADE OR PRACTICE. IN NO EVENT WILL NI BE LIABLE UNDER THIS PST FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES. IN NO EVENT WILL NI'S CUMULATIVE TOTAL LIABILITY UNDER THIS PST EXCEED THE AMOUNTS ACTUALLY PAID BY YOU TO NI UNDER THIS PST. THE LIMITATIONS SPECIFIED IN THIS SECTION 6 SHALL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS PST IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, EVEN IF A PARTY HAS BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE BASIS OF LIABILITY.

7. **CONFIDENTIALITY**

- 7.1. **Confidential Information.** Each Party (“**Discloser**”) may disclose certain information to the other Party (“**Recipient**”) related to or in order to perform under this PST (the “**Authorized Purpose**”). “Confidential Information” means all documents, records, or other written or electronic materials received by one Party from the other relating to this PST and marked as “confidential” or which a reasonable person would recognize as confidential or proprietary considering the nature of the information and/or the circumstances of disclosure.
- 7.2. **Restrictions.** Recipient agrees throughout the term of this PST and for a period of five (5) years thereafter, not to: (a) use Discloser's Confidential Information for any purpose, other than for the Authorized Purpose; (b) disclose Discloser's Confidential Information to any third party, except to Recipient's, its Affiliates' and their sub-



contractors' employees who (i) have a legitimate “need to know” to accomplish the Authorized Purpose, and (ii) are obligated to protect such Confidential Information pursuant to terms and conditions no less protective of Discloser than those contained in this PST (provided that Recipient shall in any event remain liable in the event of breach of confidentiality by such individuals); and/or (c) reverse engineer, decompile, disassemble or otherwise analyze the underlying ideas or structure of Discloser's Confidential Information. Recipient shall protect Discloser's Confidential Information as required hereunder using the same degree of care, but no less than a reasonable degree of care, as Recipient uses to protect its own confidential information of a like nature.

- 7.3. **Exclusions.** The obligations in this Section 7 shall not apply to information that can be proved by substantive evidence that: (a) was already known to the Recipient without any prior obligation of confidentiality; (b) is or becomes available to the public or otherwise part of the public domain without breach of this PST; (c) is rightfully received at any time by the Recipient from a third party without an obligation of confidentiality; (d) is disclosed by the Discloser to a third party without an obligation of confidentiality; or (e) is independently developed by the Recipient.
- 7.4. **Obligations on Termination.** Upon termination of this PST, or otherwise upon written request by a Party, the other Party shall return (or, if instructed by the requesting Party, permanently delete and certify such in writing) all confidential and/or proprietary information of the requesting Party (including any copies or summaries thereof).

8. GENERAL

- 8.1. **Relationship of the Parties.** The relationship of the Parties is solely that of independent contractors, and nothing in this PST will be construed as creating or giving rise to a partnership, joint venture, franchise, employment, agency, or other relationship between the Parties.
- 8.2. **Entire Agreement.** This PST (together with its SOWs, if any, and the applicable ESS Documentation) represents the entire agreement of the Parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous oral or written understandings and statements by the Parties with respect to such subject matter. This PST may be executed in two or more counterparts. This PST (including its SOWs, if any) may only be amended in writing signed by each Party. Section headings herein are for convenience only.
- 8.3. **Governing Law.** This PST shall be governed by and construed under the substantive laws of the State of Texas, U.S.A., exclusive of any provisions of the United Nations Convention on the International Sale of Goods, and without regard to principles of conflicts of law. The non-exclusive venue for all actions under this Agreement will be in the courts located in Travis County, Texas, U.S.A.
- 8.4. **Assignment.** This PST (including any rights or obligations): (a) may not be assigned by you without the prior express written consent of NI; but (b) may be assigned by NI without restriction or obligation. Any prohibited assignment will be null and void.
- 8.5. **Severability.** If any provision of this PST is held by a court of competent jurisdiction to be invalid or unenforceable, then (a) the remaining provisions of this PST will remain in full force and effect; and (b) such provision will be ineffective solely as to such jurisdiction, and will be substituted with a valid and enforceable provision that most closely approximates the original legal intent and economic impact of such provision.
- 8.6. **Waiver.** No failure or delay on the part of either Party in exercising any right or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of any such right or remedy preclude any other or further exercise thereof, or the exercise of any other right or remedy. Any waiver granted hereunder must be in writing, duly signed by the waiving Party, and will be valid only in the specific instance in which



given. All remedies provided for in this PST shall be cumulative of all other remedies at law or in equity.